

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

X
**CHARLENE A. ROYCE, as parent and guardian
of TIFFANY M. WHEELER, and
TIFFANY M. WHEELER,**

Plaintiffs,

- against -

AFFIDAVIT

**THOMAS R. WHEELER, LISA W. HUZELLA,
and MICHAELON A. WRIGHT, each individually
and as acting successor trustee of the
Thomas M. Wheeler Revocable Trust, u/a dated
April 9, 1986, as Amended and Restated, and
43 WEST 64TH STREET LLC, a Michigan
corporation, KRYSTAL M. WHEELER,
and the WHEELER FAMILY FOUNDATION,
INC., a Delaware non-profit corporation,**

Defendants.

X

**STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)**

TIFFANY M. WHEELER, being duly sworn, deposes and says:

1. I am one of the two younger daughters of Thomas M. Wheeler. My mother is Charlene Royce, and my sister is Krystal M. Wheeler.
2. I make this affidavit in opposition to the motion by defendants, including my half-siblings Thomas R. Wheeler, Lisa W. Huzzella and Michaelon A. Wright, to dismiss this action.
3. This action was commenced by my mother on my behalf on December 3, 2007.

At that time I was a minor. I reached the age of 18 on April 6, 2008. Accordingly, I am assuming the role of plaintiff along with my mother.

4. The caption of this case has been amended to reflect that I have been added as a plaintiff.

5. I have read the Amended Complaint and join in and ratify the allegations in it (except for the allegation in paragraph 72 thereof that, “[u]pon information and belief, the purported will dated January 6, 2007 has not been probated or offered for probate,” because I have subsequently learned that defendants and their lawyer did arrange for probate of the will -- all without actual notice to me, Krystal or my mother.

6. In connection with defendants’ motion to dismiss, I have read the accompanying affidavit in opposition of my mother, Charlene Royce. I confirm that, as she has set forth in much greater detail, I was never aware of any probate proceedings in El Paso, Texas until after January 29, 2008, when Charles Berry, attorney for plaintiffs herein, was advised of that fact by the New York litigation attorney for the defendants in this action.

7. The Amended Complaint furnishes considerable detail about the warm and loving relationship that I enjoyed with my father. I confirm that he consistently expressed his affection for me and my sister (and my mother) and a desire to see that Krystal and I were well taken care of after his death.

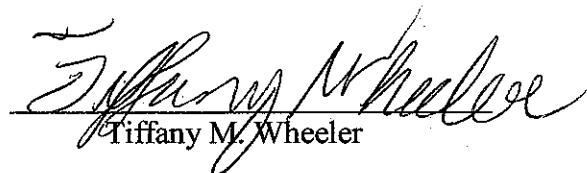
8. In particular, I recall my father’s visit with us at our apartment in New York City in June 2006 and a number of conversations we had then, which was the last time I saw him prior to seeing him at the ICU in West Palm Beach shortly before day he died on February 9, 2008.

9. Although on his numerous prior visits with us in New York he had stayed at hotels, on this occasion he wanted to stay with us at the apartment, and we were pleased to have him do so.

10. He spoke to us about his kidney cancer, which had been diagnosed some time before, and told us about his having had a kidney removed earlier in 2007. He said he was going to "beat" it, but I understood how serious his condition was, and he was visibly weaker than he had been on prior visits.

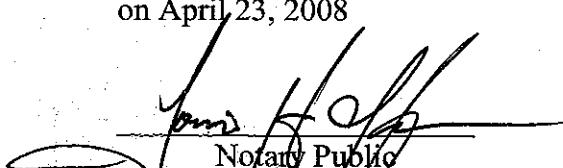
11. During that stay in June 2006 my father told me and Krystal many times how much he loved us. Although he had said this to us on many prior occasions, he was more emphatic and insistent in expressing his affection during that visit.

12. He also told us that he had made provision for Krystal and me after his death equal to provisions he had made for our half-siblings. He said he wanted to be sure that when he was gone the provisions he had made for us would not be changed from the equal treatment he intended for us. He also urged us strongly that if for any reason those provisions turned out to have been changed, we should fight to see that his true intentions were carried out.



Tiffany M. Wheeler

Sworn to before me
on April 23, 2008



Notary Public

LOUIS A. CHAMPAGNE
Notary Public, State of New York
No. 01CH6066853 Qualified in Queens County
Certificate Filed in New York County
Commission Expires November 26, 2009